

United States District Court

District

Name of Movant

NARCISO A. FRANCO

Prisoner No.

23787-038

Case No.

01-10333 MEL

Place of Confinement

FSL-Elkton, P.O. Box 10, Lisbon, Ohio 44432

UNITED STATES OF AMERICA

V. NARCISO A. FRANCO

(name under which convicted)

MOTION

05 10862 MEL

1. Name and location of court which entered the judgment of conviction under attack

United States District Court-District of Massachusetts

~~MAGISTRATE JUDGE~~

2. Date of judgment of conviction December 4, 2002

3. Length of sentence_____ 78 Months

4. Nature of offense involved (all counts)

Count One - Conspired to possess with intent to distribute, 21

U.S.C. § 846

Count Two - Distribution of cocaine, 21 U.S.C. § 841(a)

5. What was your plea? (Check one)

(a) Not guilty ☐

(b) Guilty ☒

(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☐

(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

AO 243 (Rev. 2/95)

9. If you did appeal, answer the following:

(a) Name of court United States Courts of Appeals For The First Circuit(b) Result Denied; Judgment Summarily Granted(c) Date of result November 24, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding _____

(3) Grounds raised _____

(5) Result

(6) Date of result

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

Petitioner's Attorney was Ineffective

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

(i) Petitioner's attorney failed to request an

evidentiary hearing on the safety valve issue

pre-sentencing and during the sentencing

(ii) Petitioner's attorney failed to argue or present

evidence on behalf of the petitioner's

extra ordinary family circumstances

B. Ground two: The Court Failed to Convene Sua Sponte on an
Hearing on the safety valve issue

Supporting FACTS (state *briefly* without citing cases or law): _____

During the sentencing there was factual dispute between
the petitioner and the government as whether the petitioner
satisfied criterion five of the 'safety valve' criteria;
however, the Court failed to make a sufficient finding as
whether or not the petitioner has satisfied the fifth
criteria

C. Ground three: The huge disparity in the Sentencing Between

Petitioner and his Co-defendant Raised a Presumption

of Vindictiveness by the Prosecutorial Officials

Supporting FACTS (state *briefly* without citing cases or law): _____

The Petitioner was sentenced to six years and six months,
while the co-defendant was sentenced to one year and one day

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing James E. McCall, Esq.

4 Longfellow Place, Boston, MA 02114

(b) At arraignment and plea James E. McCall, Esq.

(c) At trial James E. McCall, Esq.

(d) At sentencing James E. McCall, Esq.

4 Longfellow Place, Boston, MA 02114

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Lois M. Farmer, Esq.

(c) On appeal _____

GARNICK & SCUDDER, P.C., 32 Hyannis, MA 02601

(f) In any post-conviction proceeding _____ N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding _____ N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Pro-Se

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

04-18-05
(date)

Lois M. Farmer

Signature of Movant